

AMENDED IN ASSEMBLY AUGUST 18, 2016

AMENDED IN ASSEMBLY JUNE 8, 2016

AMENDED IN ASSEMBLY SEPTEMBER 3, 2015

AMENDED IN SENATE JUNE 2, 2015

**SENATE BILL**

**No. 163**

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**Introduced by Senator Hertzberg**

February 4, 2015

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An act to add Section ~~13557.5 to the Water Code, relating to water.~~  
*1271.5 to the Penal Code, relating to bail.*

LEGISLATIVE COUNSEL'S DIGEST

SB 163, as amended, Hertzberg. ~~Wastewater treatment; recycled water. Bail; pretrial release.~~

*Existing law provides for the procedure of approving and accepting bail, and issuing an order for the appearance and release of an arrested person. Existing law requires that bail be set in a fixed amount, as specified, and requires, in setting, reducing, or denying bail, a judge or magistrate to take into consideration the protection of the public, the seriousness of the offense charged, the previous criminal record of the defendant, and the probability of his or her appearing at trial or at a hearing of the case. Under existing law, the magistrate or commissioner to whom the application is made is authorized to set bail in an amount that he or she deems sufficient to ensure the defendant's appearance or to ensure the protection of a victim, or family member of a victim, of domestic violence, and to set bail on the terms and conditions that he or she, in his or her discretion, deems appropriate, or he or she may authorize the defendant's release on his or her own recognizance.*

*This bill would require, notwithstanding any other law, and upon the appearance before a competent court or magistrate of a person charged with a criminal offense, the court or magistrate to hold a specified hearing and take one of several actions, including, among others, releasing the person on his or her own recognizance or upon execution of an unsecured appearance bond, unless the court or magistrate determines that release pursuant to that provision will not reasonably assure the appearance of the person as required or will endanger the safety of any other person or the community. The bill would also require the court or magistrate, if the court determines that releasing the person on his or her own recognizance or upon execution of an unsecured appearance bond will not reasonably assure his or her appearance as required or will endanger the safety of any other person or the community, to order the pretrial release of the person subject to specified conditions. If the court or magistrate finds that no condition or combination of conditions will reasonably assure the appearance of the person as required and the safety of any other person and the community, the court or magistrate shall order the detention of the person before trial, except as otherwise specified. The bill would require the court or magistrate to order the detention of the person for a period of not more than 10 days, and direct the district attorney to notify the appropriate court, probation or parole officer, or federal, state or local law enforcement official, if the court or magistrate determines the person may flee or pose a danger to any other person or the community and the person is, and was at the time the offense was committed, released pending trial, released pending imposition or execution of sentence, appeal of sentence or conviction, or completion of sentence, or on conditional release, probation, postrelease community supervision, or parole.*

~~The California Constitution requires that the water resources of the state be put to beneficial use to the fullest extent of which they are capable and that the waste or unreasonable use or unreasonable method of use of water be prevented. Existing law declares that the use of potable domestic water for certain nonpotable uses is a waste or an unreasonable use of water if recycled water is available, as determined by the State Water Resources Control Board, and other requirements are met.~~

~~Under existing law, the state board and the 9 California regional water quality control boards prescribe waste discharge requirements in accordance with the federal national pollutant discharge elimination~~

system (NPDES) permit program established by the federal Clean Water Act and the Porter-Cologne Water Quality Control Act.

~~This bill would declare that, except in compliance with the bill's provisions, it is a waste and unreasonable use of water to discharge treated wastewater from an ocean or bay outfall, or for a water supplier or water replenishment district to not take treated wastewater made available for certain purposes. The bill would require the state board to promulgate regulations, on or before January 1, 2020, that would require each NPDES permit holder, on or before January 1, 2023, to submit to the state board the permit holder's plans to achieve beneficial reuse, to the maximum extent possible, of treated wastewater that would otherwise be discharged through ocean or bay outfalls. The bill would require these regulations to require, on or before January 1, 2033, the beneficial reuse of at least 50% of treated wastewater that the NPDES permit holder would otherwise discharge through ocean or bay outfalls relative to the inflow to the treatment plant. The bill would require the regulations to provide operational and compliance flexibility, as specified. The bill would authorize the state board to convene an advisory group and to consider any other recommendations or testimony provided during the regulation adoption process. The bill would authorize the state board to adopt reasonable fees payable by a holder of an NPDES permit to recover costs incurred in administering these provisions.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~yes~~-no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1     SECTION 1. Section 1271.5 is added to the Penal Code, to
- 2     read:
- 3     1271.5. (a) Notwithstanding any other law, upon the
- 4     appearance before a competent court or magistrate of a person
- 5     charged with a criminal offense, the court or magistrate shall hold
- 6     the hearing described in subdivision (f) and order that, pending
- 7     trial, the person be one of the following:
- 8         (1) Released on his or her own recognizance or upon execution
- 9         of an unsecured appearance bond, pursuant to subdivision (b).
- 10        (2) Released on a condition or combination of conditions,
- 11        pursuant to subdivision (c).

1     (3) *Temporarily detained to permit revocation of conditional*  
2 *release, probation, parole, or postrelease community supervision*  
3 *pursuant to subdivision (d).*

4     (4) *Detained pursuant to subdivision (e).*

5     (b) *The court or magistrate shall order the pretrial release of*  
6 *the person on his or her own recognizance, or upon execution of*  
7 *an unsecured appearance bond in an amount specified by the*  
8 *court, subject to the condition that the person not commit a federal,*  
9 *state, or local crime during the period of release unless, after a*  
10 *hearing held pursuant to subdivision (f), the court or magistrate*  
11 *determines that release pursuant to this subdivision will not*  
12 *reasonably assure the appearance of the person as required or*  
13 *will endanger the safety of any other person or the community.*

14     (c) (1) *If, after a hearing held pursuant to subdivision (f), the*  
15 *court or magistrate determines that the release described in*  
16 *subdivision (b) will not reasonably assure the appearance of the*  
17 *person as required or will endanger the safety of any other person*  
18 *or the community, the court or magistrate shall order the pretrial*  
19 *release of the person subject to both of the following:*

20     (A) *The condition that the person not commit a federal, state,*  
21 *or local crime during the period of release.*

22     (B) *The least restrictive and reasonable additional condition,*  
23 *or combination of conditions, that the court or magistrate*  
24 *determines will reasonably assure the appearance of the person*  
25 *as required and the safety of any other person and the community,*  
26 *which may include the condition that the person do any of the*  
27 *following:*

28     (i) *Remain in the custody of a designated person, who agrees*  
29 *to assume supervision and to report any violation of a release*  
30 *condition to the court or magistrate, if the designated person is*  
31 *able reasonably to assure the court or magistrate that the person*  
32 *charged with a criminal offense will appear as required and will*  
33 *not pose a danger to the safety of any other person or the*  
34 *community.*

35     (ii) *If the court or magistrate specifically finds on the record*  
36 *that it is necessary to protect public safety, maintain employment,*  
37 *or, if unemployed, actively seek employment.*

38     (iii) *If the court or magistrate specifically finds on the record*  
39 *that it is necessary to protect public safety, maintain or commence*  
40 *an educational program.*

1     (iv) *Abide by specified restrictions on personal associations,*  
2     *place of abode, or travel.*

3     (v) *Avoid all contact with an alleged victim of the crime and*  
4     *with a potential witness who may testify concerning the offense.*

5     (vi) *Report on a regular basis to a designated law enforcement*  
6     *agency, pretrial services agency, or other agency.*

7     (vii) *Comply with a specified curfew.*

8     (viii) *Refrain from possessing a firearm, destructive device, or*  
9     *other dangerous weapon.*

10    (ix) *Refrain from excessive use of alcohol, or any use of a*  
11    *narcotic drug or other controlled substance, as defined in Section*  
12    *11007 of the Health and Safety Code, without a prescription by a*  
13    *licensed medical practitioner.*

14    (x) *If the court or magistrate specifically finds on the record*  
15    *that it is necessary to protect public safety, undergo available*  
16    *medical, psychological, or psychiatric treatment, including*  
17    *treatment for drug or alcohol dependency, and remain in a*  
18    *specified institution if required for that purpose.*

19    (xi) *Execute an agreement to forfeit upon failing to appear as*  
20    *required, property of a sufficient unencumbered value, including*  
21    *money, as is reasonably necessary to assure the appearance of*  
22    *the person as required.*

23    (xii) *Execute a bail bond with solvent sureties, who will execute*  
24    *an agreement to forfeit in an amount reasonably necessary to*  
25    *assure appearance of the person as required. In determining the*  
26    *amount required, the court or magistrate shall consider the*  
27    *person's ability to pay.*

28    (xiii) *Return to custody for specified hours following release*  
29    *for employment, schooling, or other limited purposes.*

30    (xiv) *Satisfy any other condition that is reasonably necessary*  
31    *to assure the appearance of the person as required and to assure*  
32    *the safety of any other person and the community.*

33    (2) *In a case in which the defendant is charged with sexual*  
34    *assault, as defined in paragraph (3) of subdivision (b) of Section*  
35    *13750, of a minor or failure to register pursuant to Section 290,*  
36    *release pursuant to this subdivision shall contain, at a minimum,*  
37    *a condition of electronic monitoring and the conditions specified*  
38    *in clauses (iv), (v), (vi), (vii), and (viii) of subparagraph (B) of*  
39    *paragraph (1), if the imposition of those conditions is reasonable*  
40    *and necessary to protect public safety in that case.*

1     (3) *The court or magistrate shall not impose a financial*  
2 *condition to secure the pretrial detention of the person unless that*  
3 *condition is required to assure the appearance of the person*  
4 *pursuant to clause (xi) or (xii) of subparagraph (B) of paragraph*  
5 *(1).*

6     (4) *The court or magistrate may, at any time, amend the order*  
7 *to release a person pursuant to this subdivision to impose*  
8 *additional or different conditions.*

9     (d) (1) *The court or magistrate shall order the detention of the*  
10 *person, for a period of not more than 10 days, and direct the*  
11 *district attorney to notify the appropriate court, probation or parole*  
12 *officer, or federal, state, or local law enforcement official, if the*  
13 *court or magistrate determines both of the following:*

14     (A) *The person is, and was at the time the offense was*  
15 *committed, on any of the following:*

16     (i) *Release pending trial for a felony under federal, state, or*  
17 *local law.*

18     (ii) *Release pending imposition or execution of sentence, appeal*  
19 *of sentence or conviction, or completion of sentence, for any offense*  
20 *under federal, state, or local law.*

21     (iii) *Conditional release, probation, postrelease community*  
22 *supervision, or parole for any offense under federal, state, or local*  
23 *law.*

24     (B) *The person may flee or pose a danger to any other person*  
25 *or the community.*

26     (2) *If the official fails or declines to take the person into custody*  
27 *during that period, the person shall be treated in accordance with*  
28 *the other provisions of this section.*

29     (e) *If, after a hearing pursuant to subdivision (f), the court or*  
30 *magistrate finds that no condition or combination of conditions*  
31 *will reasonably assure the appearance of the person as required*  
32 *and the safety of any other person and the community, the court*  
33 *or magistrate shall order the detention of the person before trial,*  
34 *except in cases in which bail is required pursuant to Section 12*  
35 *or paragraph (3) of subdivision (f) of Section 28 of Article I of the*  
36 *California Constitution, in which case the court or magistrate*  
37 *shall set bail in accordance with other provisions of this chapter.*

38     (f) (1) *The court or magistrate shall hold a hearing to determine*  
39 *if release on his or her own recognizance, release upon execution*  
40 *of an unsecured appearance bond, or release with any condition*

1 *or combination of conditions described in paragraph (1) of*  
2 *subdivision (c) will reasonably assure the appearance of such*  
3 *person as required and the safety of any other person and the*  
4 *community.*

5 (2) (A) *The hearing shall be held immediately upon the person's*  
6 *first appearance before the court or magistrate unless the person,*  
7 *or the district attorney, seeks a continuance.*

8 (B) *A continuance on motion of the district attorney shall not*  
9 *exceed three court days.*

10 (3) *At the hearing, the person has the right to be represented*  
11 *by counsel, and, if financially unable to obtain adequate*  
12 *representation, to have counsel appointed.*

13 (4) *The facts the court or magistrate uses to support a finding*  
14 *described in subdivision (e) shall be stated on the record.*

15 (5) *The hearing may be reopened, before or after a*  
16 *determination by the court or magistrate, at any time before trial*  
17 *if the court or magistrate finds that information exists that was*  
18 *not known to the movant at the time of the hearing and that*  
19 *information has a material bearing on the issue whether there is*  
20 *a condition or combination of conditions that will reasonably*  
21 *assure the appearance of such person as required and the safety*  
22 *of any other person and the community.*

23 (g) *Notwithstanding any other law, the court or magistrate shall,*  
24 *in determining whether there is a condition or combination of*  
25 *conditions that will reasonably assure the appearance of the person*  
26 *as required and the safety of any other person and the community,*  
27 *take into account the available information concerning all of the*  
28 *following:*

29 (1) *The nature and circumstances of the offense charged,*  
30 *including, but not limited to, whether the offense is a crime of*  
31 *violence or involved a minor victim or a controlled substance,*  
32 *firearm, explosive, or destructive device.*

33 (2) *The weight of the evidence against the person.*

34 (3) *The history and characteristics of the person, including both*  
35 *the following:*

36 (A) *The person's character, physical and mental condition,*  
37 *family ties, employment, financial resources, length of residence*  
38 *in the community, community ties, past conduct, history relating*  
39 *to drug or alcohol abuse, criminal history, and record concerning*  
40 *appearance at court proceedings.*

1 (B) Whether, at the time of the current offense or arrest, the  
2 person was on probation, postrelease community supervision,  
3 parole, or other release pending trial, sentencing, appeal, or  
4 completion of sentence for an offense under federal, state, or local  
5 law.

6 (4) The nature and seriousness of the danger to any person or  
7 the community that would be posed by the person's release.

8 (h) An order issued pursuant to subdivision (b) or (c) shall  
9 include a written statement that sets forth all the conditions to  
10 which the person is subject, in a manner sufficiently clear and  
11 specific to serve as a guide for the person's conduct and all of the  
12 following advisements:

13 (1) The penalties for violating a condition imposed in the order,  
14 including the penalties for committing an offense while released  
15 prior to trial.

16 (2) The consequences of violating a condition imposed in the  
17 order, including the immediate issuance of a warrant for the  
18 person's arrest.

19 (3) Applicable penalties relating to intimidation of witnesses,  
20 jurors, and officers of the court, obstruction of criminal  
21 investigations, tampering with a witness, victim, or an informant,  
22 and retaliating against a witness, victim, or an informant.

23 (i) A detention order issued pursuant to subdivision (e) shall  
24 include written findings of fact and a written statement of the  
25 reasons for the detention, direct that the person be committed to  
26 a county jail separate, to the extent practicable, from persons  
27 awaiting or serving sentences or being held in custody pending  
28 appeal, and direct that the person be afforded reasonable  
29 opportunity for private consultation with counsel.

30 (j) For purposes of this section, "unsecured appearance bond"  
31 means an order to release a person upon his or her promise to  
32 appear in court and his or her unsecured promise to pay an amount  
33 of money, specified by the court using its discretion, if he or she  
34 fails to appear as promised.

35 ~~SECTION 1. Section 13557.5 is added to the Water Code, to~~  
36 ~~read:~~

37 ~~13557.5. (a) The Legislature hereby finds and declares that,~~  
38 ~~except in compliance with the provisions of this section, it is a~~  
39 ~~waste and unreasonable use of water within the meaning of Section~~  
40 ~~2 of Article X of the California Constitution to discharge treated~~



1 wastewater from an ocean or bay outfall, or for a water supplier  
2 or water replenishment district to not take treated wastewater made  
3 available to the supplier or district for groundwater recharge,  
4 surface water augmentation, or landscape irrigation.

5 (b) ~~On or before January 1, 2020, the state board shall~~  
6 ~~promulgate regulations to require both of the following:~~

7 (1) ~~On or before January 1, 2023, each holder of an NPDES~~  
8 ~~permit to submit to the state board the permitholder's plans to~~  
9 ~~achieve beneficial reuse, to the maximum extent possible, of treated~~  
10 ~~wastewater that would otherwise be discharged through ocean or~~  
11 ~~bay outfalls.~~

12 (2) ~~On or before January 1, 2033, the beneficial reuse of at least~~  
13 ~~50 percent of treated wastewater that the NPDES permitholder~~  
14 ~~would otherwise discharge through ocean or bay outfalls relative~~  
15 ~~to the inflow to the treatment plant.~~

16 (c) ~~The regulations promulgated pursuant to subdivision (b)~~  
17 ~~shall provide operational and compliance flexibility in the event~~  
18 ~~of an emergency, scheduled maintenance or repairs, extreme~~  
19 ~~weather events, or any other factor that the board determines~~  
20 ~~warrants consideration.~~

21 (d) ~~In developing the regulations pursuant to subdivision (b),~~  
22 ~~the state board may convene an advisory group for the purpose of~~  
23 ~~preparing a report or recommendations to the state board about~~  
24 ~~how to implement this section and the state board may consider~~  
25 ~~any other recommendations or testimony provided during the~~  
26 ~~regulation adoption process.~~

27 (e) ~~Consistent with Section 3 of Article XIII A of the California~~  
28 ~~Constitution, the state board may adopt reasonable fees payable~~  
29 ~~by a holder of an NPDES permit to recover costs incurred in~~  
30 ~~administering this section.~~